

Subpart D—Fair Share Objectives

- 33.401 What does this subpart require?
- 33.402 Are there special rules for loans under EPA financial assistance agreements?
- 33.403 What is a fair share objective?
- 33.404 When must a recipient negotiate fair share objectives with EPA?
- 33.405 How does a recipient determine its fair share objectives?
- 33.406 May a recipient designate a lead agency for fair share objective negotiation purposes?
- 33.407 How long do MBE and WBE fair share objectives remain in effect?
- 33.408 May a recipient use race and/or gender conscious measures as part of this program?
- 33.409 May a recipient use quotas as part of this program?
- 33.410 Can a recipient be penalized for failing to meet its fair share objectives?
- 33.411 Who may be exempted from this subpart?
- 33.412 Must an Insular Area or Indian Tribal Government recipient negotiate fair share objectives?

Subpart E—Recordkeeping and Reporting

- 33.501 What are the recordkeeping requirements of this part?
- 33.502 What are the reporting requirements of this part?
- 33.503 How does a recipient calculate MBE and WBE participation for reporting purposes?

APPENDIX A TO PART 33—TERMS AND CONDITIONS

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SOURCE: 73 FR 15913, Mar. 26, 2008, unless otherwise noted.

Subpart A—General Provisions

§ 33.101 What are the objectives of this part?

The objectives of this part are:

- (a) To ensure nondiscrimination in the award of contracts under EPA financial assistance agreements. To that end, implementation of this rule with respect to grantees, sub-grantees, loan recipients, prime contractors, or subcontractors in particular States or locales—notably those where there is no apparent history of relevant discrimination—must comply with equal protection standards at that level,

apart from the EPA DBE Rule's constitutional compliance as a national matter;

- (b) To harmonize EPA's DBE Program objectives with the U.S. Supreme Court's decision in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995);

- (c) To help remove barriers to the participation of DBEs in the award of contracts under EPA financial assistance agreements; and

- (d) To provide appropriate flexibility to recipients of EPA financial assistance in establishing and providing contracting opportunities for DBEs.

§ 33.102 When do the requirements of this part apply?

The requirements of this part apply to procurement under EPA financial assistance agreements performed entirely within the United States, whether by a recipient or its prime contractor, for construction, equipment, services and supplies.

§ 33.103 What do the terms in this part mean?

Terms not defined below shall have the meaning given to them in 40 CFR part 30, part 31 and part 35 as applicable. As used in this part:

Availability analysis means documentation of the availability of MBEs and WBEs in the relevant geographic market in relation to the total number of firms available in that area.

Award official means the EPA Regional or Headquarters official delegated the authority to execute financial assistance agreements on behalf of EPA.

Broker means a firm that does not itself perform, manage or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials or labor.